

# **Digital Legal Rights for Suspects: Using Technology to Improve Procedural Safeguards**

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## **Introduction**

At the 2017 ILAG Conference, I presented a paper which examined the potential for an App to be used as a self-help tool for suspects in police custody. Outlined at that time were research findings arising out of a comparative study of young suspects, which helped to inform the minimum rules and guidelines for the EU Directive [2016/800] on improving procedural safeguards for young suspects (Kemp and Hodgson, 2016). When finding that most children are not in a position to understand their legal rights, it was recommended that mandatory legal advice should be required for those aged under 16 years. The research findings also highlighted the adult-centred and punitive approach adopted in many EU countries when dealing with young suspects, including England and Wales, the Netherlands and Poland. In order to try and help people make informed decisions, particularly over the waiver of legal advice, a prototype App was created. This was tested with 100 adult detainees in two police custody suites (Kemp, 2018). Key findings from this study are first reported in relation to this digital legal rights project.

It had been our intention to include interviews with young detainees but this was not possible, mainly because their involvement required the consent of the appropriate adult; they tended to arrive at the station in time for the police interview, which was then the priority. There has been very little research examining suspects' legal rights from the perspective of children and young people (CYP) and, without hearing about their experiences in the criminal process, an adult-centred approach continues to be adopted. To help address this problem, the Legal Education Foundation funded a scoping study to explore and improve CYP's understanding of their legal rights as suspects. This included 95 interviews with CYP, half of whom had experience of being dealt with as a suspect in the criminal process. Key findings arising out of this study are next presented and these highlight the need for a child-friendly approach to be adopted, taking into account differences in understanding between adults and children based on maturity and cognitive abilities.

Finally, set out in this paper is a summary of the next steps currently being undertaken in this project. This includes setting up a website and App to inform the public about their legal rights in voluntary police interviews. It also includes engaging with CYP in designing a child-friendly App to be used by the police (and other agencies) when dealing with CYP in the criminal process.

## **1. Digital legal rights for suspects: users' perspectives and PACE safeguards**

### **Background**

It was agreed with the police in two large custody suites that we could talk to detainees who were willing to be interviewed about their legal rights, and also ask them how they were being treated in police custody (with the purpose of informing

the development of a digital feedback form to be incorporated into an App). A prototype App was used to inform people of their right to legal advice, setting out what a lawyer is, and explaining how they can assist them in the police station. The section on 'legal advice', required respondents to press 'yes' or 'no' to indicate whether a lawyer had been requested. For those pressing 'yes', the App explained what happens next, with the police contacting the Defence Solicitor Call Centre to arrange a lawyer, either their nominated lawyer or the duty solicitor. If 'no' was pressed, five text boxes appeared setting out the main reasons why legal advice was refused, respondents were then asked to select the box which most closely resembled their reason for declining legal advice. Having ticked a box, a new text box appeared with additional information. In response to those stating that legal advice is too expensive, for example, the text box confirmed that legal advice is free. For those selecting that they do not need a lawyer (which is the main reason given by suspects for declining legal advice, Kemp, 2010), it was pointed out that the law is complicated and a solicitor can help, particularly in the police interview. For those indicating that they were not prepared to wait a long time to hear from their lawyer, it was stated that the police investigation is generally the main reason for the delay, and that suspects can speak to a lawyer over the telephone to assist them in making a decision. After considering the statements presented, respondents were asked if they wanted to change their mind about having legal advice. If 'yes' was pressed at any time, the intention is that the police interview cannot proceed until the detainee has had an opportunity to speak to a lawyer.

### ***Factors influencing the take-up of legal advice***

From police data drawn from electronic custody records, the proportion of detainees requesting legal advice at both custody suites was 53 per cent, being higher than the average of 45 per cent identified in an earlier study (Pleasence, Kemp and Balmer, 2011). Three-quarters of those who had refused legal advice simply said that they did not need a solicitor – some saying that they had 'done nothing wrong', and others saying they were guilty. As a first response, a quarter of respondents said that they refused legal advice because they believed that this would lead to delays but, when asking further questions when going through the App, it became evident that long delays was the main reason why most people declined legal advice. When using the App, therefore, it was possible to discuss the reasons for refusing legal advice in more detail, providing a more nuanced understanding of the topic.

### ***Suspects' understanding of the need for legal advice***

There was some confusion over when it is important to have a lawyer, with some people saying that you only need one if you are 'guilty', while others were of the opinion that only the 'innocent' need legal advice. For people not legally trained, however, the legal complexities involved when applying the rules of criminal law and evidence means that many respondents did not always know if they are 'guilty' or 'not guilty' in law. In cases where they might consider themselves to be 'guilty,' for example, a defence might be raised based on their version of events. Contrariwise, for those who state their innocence, they could unwittingly describe the incident in a way that implies their guilt (Kemp, 2010, p. 39). For those who refused legal advice because they 'haven't done anything wrong', there were concerns raised over the negative connotation that can arise when requesting legal advice, i.e. it makes them look guilty. There were also a number of respondents who declined legal advice

because they felt that they could cope on their own although, when discussing the allegation, it was evident that this was not the case, particularly if they were trying to ignore the seriousness of the evidence against them. It was also noted that while some respondents declined legal advice in the police station, they said that they would have a lawyer if they went to court. Not realising in some cases at least, if they had a lawyer in the police station the case was unlikely to get to court.

With research having highlighted such confusion, Code C (of the Codes of Practice) of the Police and Criminal Evidence Act 1984 (PACE), which is the legislative framework which governs police powers when dealing with suspects, requires additional safeguards. When legal advice is declined, for example, a custody officer should advise detainees that they can speak to a solicitor over the telephone, but no detainees in this study were seen to be offered this right.<sup>1</sup> Furthermore, when later interviewing respondents, many were not aware that they were allowed to have a telephone conversation with their lawyer.

#### *Delays undermining the take-up of legal advice*

With many respondents raising concerns over how long they had been held in custody, we made enquiries as to the average length of detention and were surprised to note that this was approaching 18 hours. This is almost double the time, of just over nine hours, identified in an earlier study when examining over 30,000 custody records in 2009 based in four police force areas (Kemp et al., 2013). Such long delays are discouraging many suspects from having legal advice, mainly because there is a common misconception that the lawyer is the main cause of the delay. There were also a number of respondents who had requested legal advice but later, after long delays, changed their mind in the hope that they would be dealt with quickly. While a number of respondents said they would have legal advice if it would help to reduce delays, they were told by the police that they would be dealt with more quickly if they declined a lawyer.

When going through the App with respondents, the intention was to encourage people who had declined legal advice to change their mind and have a lawyer. While some said that they would change their mind, and have a lawyer, they were only prepared to do so if we could assure them that this would not lead to a delay. We could not give such an assurance, mainly because we did not know when the police interview was to be held. If this was imminent, then a request for legal advice would lead to a delay while waiting for the lawyer to arrive at the station.

From earlier research, which involved interviews with 50 custody officers in four large police stations, it is known that police investigators can use long delays to encourage suspects to change their mind about having legal advice (Kemp, 2013). Having reported this issue to the National Police Custody Forum, there was a change made to Code C (para. 6.6(d)(i)) and, when conducting a review of a suspect's decision to change their mind about having legal advice, the custody inspector is required to try and make contact with the lawyer involved. In both custody suites observed,

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<sup>1</sup> There were similar findings in four other custody suites observed, with detainees in only one custody suite routinely being offered this right (Kemp, 2013).

however, the PACE inspectors were not aware of this requirement and so the lawyers involved were not contacted during the inspector's review.

#### *The type of offence impacting on legal advice*

Most respondents said that they would probably have a lawyer if being dealt with for a serious offence, with some saying that they had declined legal advice because they were being dealt with for a minor offence. There were occasions, however, when respondents commented that they were being dealt with for a minor offence but later went on to accept that the allegations made against them were serious, particularly when involving domestic violence issues. These comments help to highlight the lack of understanding that some people have about their predicament as a suspect, not always realising the importance of what they say, or do not say in the police interview, or understanding how a lawyer can help them.

#### **Potential barriers to accessing legal advice**

It was evident when talking to respondents that very few had spoken to their lawyer prior to the police interview. While a request for legal advice was generally made when people were booked into custody, it was often many hours later before they spoke to their lawyer. With such long delays, some respondents were confused about whether their request for legal advice had been granted or not. While many were anxious to speak to a lawyer, they were being advised by custody staff that they would have to wait until the police interview to do so.

It was interesting to note that suspects who were experienced in the criminal process, and knew their legal rights, were able to talk to their lawyer over the telephone, while others were not. When going through the App, a number of respondents expressed surprise that they could speak to a lawyer over the telephone. In practice, however, not only were detainees not offered this right, but it also became apparent that the police were refusing to let some people have a telephone call. In one case, for example, after the respondent had been informed about this rights in the research interview, he asked the detention officer if he could talk to his lawyer over the telephone. The detention officer refused his request, saying that he would have to wait until the police interview before speaking to his lawyer. The respondent pointed to the written notice of rights, provided by the police, saying that he has a right to make this call. Still refusing the request, the detention officer said, *"It doesn't happen like this in practice."* When the respondent persisted, he was told, *"You'll have to take it up with the inspector"* (K.41).

It is contrary to Code C for a police officer to say or do anything with the intention of dissuading any person to obtain legal advice (para. 6.4). However, it is important to also consider defence-related factors that can undermine access to legal advice. With payment of a fixed fee for police station work, for example, many lawyers tend to concentrate on the police interview only and do not try to talk to their client beforehand. It is important to take into account the background of such practices, with lawyers over the years having had difficulties in trying to get through to busy custody suites over the telephone and, once connected, custody staff may not have the time to facilitate a conversation with their client (Kemp, 2010 and 2013). With lawyers wasting a lot of time trying to talk to their client over the telephone, it is perhaps not surprising that some lawyers are waiting for the police interview before

talking to their clients. Such an approach, however, is contrary to contractual requirement with the Legal Aid Agency requiring lawyers to speak to clients within 45 minutes of receiving a referral.

### **Police practices undermining suspects' legal rights**

There were a number of practices observed which were seen to undermine suspects' legal rights, some of which are commented on above. In relation to telephone calls, for example, not only are suspects entitled to talk to their lawyer over the phone but PACE also makes it a 'fundamental' right for that call to be held in private. This right to privacy is routinely breached in many custody suites because there are no arrangements to facilitate such a call. This includes in the two relatively new large custody suites observed, where this requirement was not taken into account when designing new custody facilities.

It was when interviewing a small number of respondents that we noticed another police practice that was seen to undermine suspects' legal rights. In these cases, the suspects said that they had arranged a time with the police to attend at the station for a voluntary interview. The police are increasingly using voluntary interviews instead of having to arrest and detain suspects for the purposes of carrying out an interview. In these cases, however, having arrived at the station in time for the voluntary interview, the suspects were arrested and detained because the police were not ready to proceed with the interview, mainly because a statement had not been taken from the complainant. It seems that these cases involved an assault arising out of a domestic violence incident and instead of asking the suspects to return to the station at a later date, when the police had gathered the relevant data, there seems to have been a risk-averse approach adopted which led to their arrest and detention. A custody officer explained that the police are increasingly risk-averse in such cases, mainly because there are concerns that if suspect were to reoffend while waiting for the interview to take place, the police would be criticised for allowing this to happen because of delays in dealing with the case. However, it is inappropriate for the police to arrest and detain people, for five hours and more, because an officer had not carried out the required tasks prior to conducting the interview.

### **Suspects' experiences of being held in a cell**

When user-testing the App with suspects it was helpful to discuss with them how they were feeling while being held in a cell. Not surprisingly, this was an extremely difficult experience for most people, particularly those who had been held overnight. While most respondents said that the police treated them fairly, they did not feel that they were being treated fairly within the criminal process. As Skinns (2011) notes, police custody is a place of sanctioned isolation, where detainees are legally held in separation from the public and from each other. Safeguarding those held in custody is a priority for the police and this can be extremely difficult, particularly as people detained are vulnerable and in a stressful situation. There are also many people in custody who are not well, and others who want to self-harm or are suicidal. To make the cells safe, these are bare and clinical, with nothing to distract people, not even a watch. Time passes slowly for people with nothing to do, with no stimulation, and with many having to wait in a cell for many hours. Most respondents described the

experience of being in a cell as ‘horrible’ and, by far, the worst thing about being a suspect. For some respondents, they found the experience dehumanising, depriving them of their human rights. One respondent said that it was like being in a dog pound, with no one talking to him but with the police regularly opening the hatch and giving him things to eat and drink.

While a number of respondents said that the cell was a safe space, the main problem is that they are effectively held incommunicado (with a PACE requirement for someone to be told of their detention from the outset, but with no further contact required if people are held for many hours). This was particularly difficult for people who, in addition to having the stress of being investigated by the police as a suspect, also have caring responsibilities for children, elderly parents and/or animals, and/or are worried about how detention might impact on their job.

It is important in relation to police legitimacy, and people complying with the law, that their experiences of being held in custody are communicated to policy makers, particularly as they need to feel that they are being treated fairly, irrespective of whether the outcome is favourable to them (Sunshine and Tyler, 2003; Skinnis, 2011, pp. 35-43). It is for this reason that respondents were asked questions about their experience in police custody and, from the comments received, we will be exploring how a digital feedback form can be incorporated into an App to be used by suspects at the end of their time in custody.

### **Digital legal rights and access to legal advice**

Most respondents spoke positively about the App when considering the potential to help people better understand their legal rights, particularly if used by children and young people, and those brought into custody for the first time. A number of respondents said that the App was a big improvement on the written notice of rights the police give them in custody. There were also positive comments made about the potential for the App to assist detainees’ in better understanding their legal rights. On the downside, when using the App in police custody, it had to contain a lot of information about the custody process, so the prototype was heavily text-based and not user-friendly. In due course, information will be presented in different formats so as to be more accessible and engaging, particularly for young people.

When going through the App with respondents, we discussed the potential for the App to help improve communication between solicitors and their clients by using virtual connectivity. This idea was warmly received, with one respondent saying, *“It would be good to have an iPad where you can have a video link and speak to your solicitor in private. He can explain what’s going on”* (K.75). From the outset, a problem identified by the police when using an App is that vulnerable detainees could use the tablet which hosts the App to self-harm. To try and get around this problem, it was suggested to respondents that the App could be displayed on a TV monitor embedded into their cell wall, and they could then speak to their solicitor in

confidence through a secure virtual link.<sup>2</sup> While some respondents were sceptical that the police would allow this, it was thought to be the way forward.

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<sup>2</sup> The initial contact would need to be made by the police when contacting the defence solicitor call line and the solicitor could then be connected to the TV monitor through a secure and confidential link.

## **2. Exploring and improving CYP's understanding of their legal rights as suspects: A scoping study**

### **Background**

The study involved 95 research interviews with CYP, talking about the legal rights of suspects - 62 were interviewed individually and 33 took part in 19 focus group interviews. There were 47 respondents who had experience of being dealt with as a suspect in the criminal process and the stories they have to tell about their experiences are helping to develop a robust evidence base from which to help inform change. They were asked questions about their legal rights, how they exercised those rights, and their experiences in the criminal process, including whether or not they understood what was happening. This included young people who had been convicted of an offence and were being dealt with by the Youth Offending Services (YOSs), those in residential children's homes, and others in a Secure Children's Home (SCH). There were also 48 interviews with CYP who did not have experience of being dealt with as a suspect but who were asked questions more generally about their understanding of suspects' legal rights. This included six focus groups interviews with 25 children aged 11 to 13 years in school and other vulnerable groups, including CYP with mental health problems and those overrepresented in the youth justice system, including those in care and/or coming from a Black, Asian or other minority ethnic background.

The aim of this project is not only to improve the way that CYP are informed about their legal rights, in a way that is engaging and informative, but also to bring to the attention of policy makers the inappropriateness of continuing with an adult-centred approach when dealing with children as suspects. From the outset, it is important to note that a major hurdle to be overcome in this study was in gaining access to CYP involved in the criminal process. It took us six months or more to negotiate access and, in some cases, our application was declined, including in seeking to gain access to young people in Young Offender Institutes. While it is understandable that a protectionist approach is adopted by gatekeepers but, by not allowing researchers access to CYP who have experience of being in the criminal process, their voices are not heard. This means that we continue with the adoption of an adult-centred approach, whereas by listening to the stories that children have to tell about their experiences, and understanding in the process, highlights the need to adopt a child-focused approach.

### **Emerging findings: CYP dealt with as suspects**

While 47 CYP were interviewed as suspects, their experiences in the criminal justice system were varied. At one end of the scale, there were those who had encountered the police for the first time while, at the other end, some had experience of being dealt with repeatedly at court. This range of experience is helpful in providing different perspectives when considering suspects' understanding of their legal rights, and how they exercised those rights. It is not surprising that the more experienced people become within the criminal justice system the more they understand their legal rights, although not always in an informed way. The more experienced people are in the criminal process, for example, the more likely they are to believe that the duty solicitor in custody is a police appointed lawyer (Kemp, 2010). We also noticed that the more serious the type of offence, and/or the complexity of social welfare/health issues involved, then the more suspects' legal safeguards were upheld. Within the SCH, for example, where respondents had been deprived of their

liberty, either due to the seriousness of their offending behaviour, or because of experiencing severe problems in their lives, they all had a lawyer. While most respondents who had experience of being dealt with as a suspect on many occasions said that they would always have a lawyer, most also accepted that this was not the case when they were first came to the attention of the police.

Within the sample of 47 suspect respondents, 67% said that they received legal advice, which is higher than the average take-up of legal advice, ranging from around 45% (Pleasence et al., 2011) to 53% (Kemp, 2018). However, in part, this will be due to including vulnerable suspects in this study; nine being in a SCH, for example, 27 having been convicted of an offence and being dealt with by a YOS, and four who were in care. When having the involvement of Social Services, or in care, young suspects are more likely to have an appropriate adult who has been trained and they require a lawyer to be involved. It is interesting to note, however, that in a sample of nine young people who had been sentenced to an attendance centre order, while 89% of the nine suspects had requested legal advice, only 55% received such advice. This was because most of them were interviewed on a voluntary basis and the request for a lawyer was not actioned by the police.

The respondents were asked questions to test understanding of their legal rights as suspects, which included asking about the role of the police, lawyers and appropriate adults in the criminal process, as well as the modified caution. The majority of people said that they understood their legal rights but, when asking them to comment on what these rights were; some were unable to do so. Others gave very brief answers, saying that you can have a lawyer and/or make no comment. Overall, 38% of suspect respondents said that they understood their rights, which means that 62% did not. In relation to the modified caution, just over half said that they understood what this means, although the explanation seemed to repeat what the police had told them. That is, while they could say nothing in the police interview, they would look like a liar in court if they later tried to explain what had happened, which puts them under pressure to answer police questions.

It was in relation to how they were dealt with by the police that around three-quarters of respondents reported feeling under pressure to answer police questions. In most cases, they said that such pressure came because officers kept repeating the same questions, either because they wanted a different response, or because there continued to be a 'no comment' reply. Other pressure was said to come from the police telling young suspects that they had to 'tell the truth'.<sup>3</sup> Despite such pressure, 64% of suspect respondents reported making 'no comment' responses in the police interview, with others saying that they answered some or all police questions. There was sometimes confusion as to whether the respondent had answered police questions or not. Initially, for example, some said that they had made 'no comment' replies but later went on to accept that they had made a response which, in some cases, included making an admission. After listening to what a young suspect thought they said to the police, it would be helpful to analyse what was actually said in the police interview. Indeed, a Speech and Language Therapist, interviewed as part of this project, said that CYP often try to be helpful and, if they have misunderstood a question put to them by the police, they try to fill in the gaps by

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<sup>3</sup> There were similar findings with young suspects being put under pressure to answer police questions reported in Kemp and Hodgson's (2016) study, which included analysis of police interviews.

guessing at the response required. This can lead to a negative cycle with the police, with the young suspect later hearing themselves say something to the police, but knowing that it did not happen in reality. Accordingly, she feels that there is a need for many young suspects to have an intermediary when being questioned by the police.

A number of young respondents reported having learning difficulties and/or mental health problems. While most respondents said that they told the police that they had mental health problems when detained, they said that this did not make any difference to how they were treated in the police interview. There were a couple of respondents who said that they have mental health problems but did not tell the police, mainly because they did not know what the police would do with this information and they were concerned that this could lead to them being held for longer in custody.

### **Emerging findings: CYP without having experience of the criminal process**

We included focus group interviews with children aged 11 to 13 years in this study because the law adopts a 'one size fits all' approach in England and Wales when dealing with suspects from age 10 to 17 years. At such a young age, the children had little understanding of what happens in the criminal process, although they would tend to give a response when asked questions about it. More generally, children saw short steps being taken from a suspect committing an offence, being arrested, taken to court and then sent to prison. Much of the information children gave about suspects' legal rights had been gleaned from TV programmes, particularly American 'cop' series, such as NCIS and CIS, which sensationalised serious crimes of murder and rape. Some respondents would use American terms, such as referring to the police as the 'FBI' or the 'Feds' and with prison being referred to as 'juvy' or 'baby jail'.

What was highlighted in the focus group interviews is that while children know something about suspects' legal rights, they lack an understanding of the nature of rights *per se*, and particularly the inalienable nature of those rights. While most children had heard of a lawyer or solicitor, for example, they were under the impression that the lawyer would only assist someone at court and not in the police station. There was also a perception held by many children that the police are the 'good guy' and the lawyer is the 'bad guy', although such perceptions were sometimes challenged. One respondent, for instance, said, "The solicitor is a good guy. He's there to help you. If someone has been killed the police might have got the wrong person." From their perspective, children did tend to recognise the police as being someone they could trust, and to whom you would tell them the truth. In this context, a lawyer was seen to be unhelpful, someone who could challenge the police unnecessarily, mainly because he was paid to do so.

There were different perceptions when commenting on the role of a lawyer. One respondent replied, "He's like a social worker" and another said, "I don't trust those people, they're just there for the money. He'll just lie and won't help the child. He's only interested in the money". A child questioned this when saying, "That's a big accusation," but another commented saying, "I don't think a solicitor has anything to do with children, he's just there to make money." The overwhelming majority of children were under the impression that suspects had to pay to have a lawyer – this was also the perception of one of the teachers. It was from seeing adverts from lawyers on television that children were under the impression that you had to pay for

legal advice. When told that a lawyer is free, the children could not understand how the system worked, pointing out that lawyers needed to be paid. There was a general impression that a lawyer would cost around £100, which their parents would have to pay. This was the main reason why most said that they would not have a lawyer if they were arrested, unless they were being dealt with for a serious offence. There was also a general view that lawyers would only turn up in serious cases, where they would get paid. It was confusing for the respondents to be told that having a lawyer is free, paid for by the government. Without understanding the complexities of what happens in an adversarial system of justice, the children could not understand why the government would pay for a police officer, whose role is to arrest criminals and put them in prison, and to then pay a lawyer to try and get them off. Such misconceptions over the role of lawyers were also found in interviews with older respondents, which suggests that the public need to be better informed about what happens within an adversarial system of justice, to stress that legal advice is free and, to explain the role of a lawyer within the criminal process.

It was not comfortable for the children when asked if suspects can decide whether or not to answer police questions. One said, "You can make 'no comment', or lie to the police, but if you don't tell the truth you can get into more trouble." Another remarked, "You should answer all the questions but if you're asked if you did it then you can say 'no comment'. It will make you look suspicious though." It was also difficult for some children to understand the different roles taken on by the appropriate adult (AA) and the lawyer in the police interview. Most respondents were of the opinion that the AA would be a parent and, if this is the case, they said that the AA is there to help them and they would trust them more than they would a lawyer. When asked what they would do if their AA told them to tell the police the truth but the lawyer advised them to make 'no comment', most children said that they would go with their AA. As this respondent put it, "The AA is there to help you; they are with you for life. The solicitor is just there to get paid." Another respondent said, "I'd listen to my mum. I have to live with her!" When asked what a lawyer/solicitor was, and what they could do to help suspects, one said, "They are there to defend you." When asked what this meant, another replied, "They talk to you and give you something to eat if you're really hungry. They're good with words. They'll talk to the judge and say I'm not guilty."

The focus group interviews with children highlighted their inability to understand key concepts underlying suspects' legal rights – such as the role of the lawyer. It is evident from the comments made by children that they do not have a sufficient understanding to make informed decisions, which raises questions about the mandatory involvement of a lawyer when dealing with children as suspects. Interestingly, there is such a mandatory requirement in Scotland (introduced in January 2018) for all under 16 year olds to have a lawyer, and also for those under 18 years who are under a compulsory supervision order.

For the other young people interviewed in this study as non-suspects, aged from 12 to 20 years, while they did not have experience of being a suspect, there were important differences in the extent to which they had experience of the criminal process. There were some respondents, for example, who had no experience at all, and others who had experience but only as a victim or a witness. In the main, the responses from this group tended to adopt a moral stance when talking about suspects' legal rights. This meant that they generally saw suspects as people who choose to commit a crime and that they then have to face the consequences. On the

other hand, there were respondents who had experience of being dealt with by the police, having been stopped and searched, or with the police coming into the homes of the young people in residential care. This group were also more likely to have friends and family members who had been dealt with by the police, and so they were better informed about suspects' legal rights. This meant that the police were more likely to be viewed negatively and suspects' legal rights were seen to be important in challenging an abuse of police powers.

Most non-suspect respondents did not know what legal rights suspects have when being dealt with by the police. Some said that suspects have a right to a lawyer, and to make 'no comment' in the police interview, although they were unable to expand on this. When asked where they got their information from, most said from television shows. One commented on watching the Bill, a fictional show about a police station, first broadcast in 1984. Another said that she learned a lot by watching police documentaries about suspects' legal rights. In the main, however, as found in the 11 to 13 year old age groups, respondents said that they got their information from popular US 'cop' programmes, such as NCIS and CIS. It is not surprising that such information fails to give people an informed view of what happens in the criminal process. Indeed, it is of concern that it can give people a biased view that can influence decisions made if they are then dealt with as a suspect. With sensationalised portrayals of very serious offences, for example, this gives people the impression that minor matters are not taken seriously in the criminal justice system. Accordingly, when asked if they would have a lawyer if they were suspected of having committed an offence, for example, most said that they would only do so if being dealt with for a serious offence, such as murder, rape or burglary. For an offence of shoplifting, the respondents did not feel that this was serious enough to warrant a lawyer.

In checking respondents understanding of the legal rights of suspects, the words of the modified caution were read out to them and they were asked to explain what it means. While most said that they had heard the words before, mainly on television, there were different views expressed about what the caution means in practice. For respondents who were seeing the decisions of people to offend through a moral lens, while they accepted that suspects have a right to remain silent, they were of the view that the court would see this as an admission of guilt. Furthermore, it was pointed out that if innocent, they should be only too willing to talk to the police, while only the guilty would be reluctant to do so. Some respondents could not understand why offenders were given the opportunity to remain silent, but by doing so, they were perceived as effectively admitting guilt. Accordingly, it was not surprising that these respondents were of the view that the police should be able to put people under pressure to answer their questions and to tell the truth. For those who had experience of being dealt with by the police as potential offenders, on the other hand, it was recognised that people needed to be protected from police pressure, put on them to respond to police questions. These respondents also pointed out that young people are often confused about their legal rights, and unsure about what to do, particularly when first being dealt with by the police.

When asked about the role of the lawyer in the criminal process, some respondents simply did not know how a lawyer could help them. Others said that the lawyer is there to help and support you; to be on your side. As found when talking to the school children, most respondents were of the view that you had to pay if you wanted a lawyer to help you, although a couple thought that it might be free for

children. One respondent said that he would not have a lawyer because, "I'd be broke at the end of the day." The respondents were surprised to learn that it was free to have a lawyer. Once again, we can see the influence of television, giving people the wrong impression that they have to pay to have a lawyer in the police station.

It was interesting when discussing with respondents what information they felt children needed when being told about their legal rights, and how they should be provided with such information. Most respondents said it is important to tell children in schools about the legal rights of suspects, although most felt that the information should be aimed at those aged 14 years and above. Indeed, there were concerns raised over 10 to 13 year olds being drawn into the criminal process, which included being placed in a cell, particularly when they are not able to understand their legal rights. Some respondents, however, were of the view that it is important for children to tell the truth, and that it is inappropriate for them to be able to exercise their right of silence when talking to the police. It was also uncomfortable for some teachers (in school and in the SCH) to hear children being told that they do not have to respond to police questions, or to tell them the truth. This is an important issue, particularly when good parenting means that children are encouraged to take responsibility for their actions. Within an adversarial system of justice, however, with the rule of law requiring due process safeguards for suspects being dealt with by the police, they have legal protections that require the opposite effect. It would be helpful for policy makers to consider this dilemma and to explore whether an alternative system of justice could be used when dealing with children – such as the welfare approach adopted in Scotland, or the restorative justice approach operating in Northern Ireland. Without such change, the majority of respondents in this study felt that it was too young for children under 14 to be dealt with by the police as a suspect. If they continue to do so, then it was suggested that it should be mandatory for all children to have a lawyer.

Within the sample of non-suspects, the interviews with CYP in care have been invaluable in highlighting a number of important issues that need to be taken into account when considering reform of the criminal process. It was pointed out, for example, that often children are placed in care because there are serious problems at home, either relating to their behaviour or their environment. Often they said it is because children have experienced physical and/or mental abuse, or been a witness to domestic violence that they are put into care. While they were keen not to present such issues as an excuse for offending behaviour, they did say that this can lead to anger management issues and it would be helpful for the police to recognise this and understand that it would be helpful to adopt a different approach when dealing with a complaint. If the police are called to deal with a young person in care, for example, the young respondents said that it is important that the police give them space to cope with the situation. A couple of respondents, for example, said that they were in the middle of an anger episode when the police arrived and they were lucky that the police allowed them to calm down before dealing with them. Without such an approach, they said that by focusing on an arrest, this could lead to the police having to restrain them, which could exacerbate the situation and lead them to being drawn into the criminal process and criminalised unnecessarily. They gave examples of where they felt that the police could usefully adopt a different approach, when called out to deal with the behaviour of a child in care, particularly if the police were trained to understand some of the triggers that can lead to increased disruptive behaviour, thus helping to avoid the escalation of situations.

The final issue discussed with all respondents was how they prefer to access information about their legal rights, and what improvements they felt could be made to make this information more accessible to CYP. At the present time, respondents said that they would generally get information from family or friends but would only do so if they were in trouble with the police. The majority said that they thought it would be a good idea to have a website and App to inform people of their legal rights, the website being for adults and the App for CYP. Instead of being text-based, videos were said to be more helpful when informing CYP of their legal rights.

### **3. Next Steps**

Findings from the two research studies are helping to inform the design of Apps to assist suspects when arrested and/or interviewed by the police. When user-testing the prototype App with detainees in police custody, a number of issues arose concerning suspects' lack of understanding of their legal rights, and factors were also highlighted which undermine access to legal advice. It is not possible to continue work on an App in police custody which informs suspects of their legal rights, only to find that not all of those rights are available in practice. Indeed, it is disingenuous to tell people that they can have a confidential discussion with their lawyer over the telephone, only to find that this right is denied to some people. Accordingly, we have turned our attention on working with the police to develop an App to be used in voluntary interviews. In developing an App to be used when dealing with suspects on a voluntary basis. We are currently working with a Police Service in the Midlands and an update on progress will be reported at the ILAG Conference.

In a separate project, we are working on designing and testing a child-friendly App with CYP in order to help improve procedural safeguards. This will include setting out suspects' legal rights in an easy-to-read format and to test for understanding, using interactive videos. We are also exploring the potential for incorporating into the App a self-screening assessment of vulnerability. This will require extensive work when engaging with vulnerable young people and seeing how they would be prepared to self-report on such sensitive issues. It will also involve liaising with the police, lawyers, appropriate adults and intermediaries to see what additional safeguards might be required in improving the procedural rights of young suspects when using digital technology. An update on this project will also be reported to at the ILAG conference.

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